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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 **MKM FARMS, INC., a California**
12 **corporation,**

13 **Plaintiff,**

14 **v.**

15 **SUNTERRA PRODUCE TRADERS, INC., a**
16 **California corporation, STEPHEN**
17 **BRAZEEL,**

18 **Defendants.**

) **Civil Action**

) **Case No.:**

) **COMPLAINT FOR VIOLATIONS OF THE**
) **PERISHABLE AGRICULTURAL**
) **COMMODITIES ACT ("PACA"); BREACH**
) **OF FIDUCIARY DUTIES**

19
20 For its Complaint, the plaintiff respectively alleges as follows:

21 **THE PARTIES**

22 1. MKM Farms, Inc. ("Plaintiff") is a corporation duly organized under the laws of the State
23 of California with its principal place of business located in Salinas, Monterey County, California.

24 2. Plaintiff grows and sells wholesale quantities of perishable agricultural products
25 (hereinafter "Produce") in interstate commerce and operates its business under a valid United States
26 Department of Agriculture issued PACA license.

27 3. Defendants are Sunterra Produce Traders, Inc., a corporation duly organized under the
28 laws of the State of California ("Sunterra") and Stephen Brazeel ("Brazeel"), on information belief,

1 is or was an officer, director or shareholder in a position to control Sunterra at all times relevant to
2 this action. Sunterra and Brazeel shall hereinafter be collectively referred to as the “Defendants.”

3 4. At all times relevant herein, each of the Defendants were engaged, directly or indirectly,
4 in the business of purchasing and/or selling Produce in wholesale or jobbing quantities and,
5 therefore, are “dealers” of Produce as defined by the Perishable Agricultural Commodities Act,
6 1930, as amended, 7 U.S.C. §§499a-499t (the “PACA”).

7 5. At all times relevant hereto, Sunterra operated its business under a valid United States
8 Department of Agriculture (“USDA”) issued PACA License, which the USDA identifies as License
9 No. 20090314.

10 JURISDICTION AND VENUE

11 6. The District Court has jurisdiction over this civil action arising under §5(4) of the PACA,
12 7 U.S.C. §499e(c)(4), pursuant to 28 U.S.C. §1331. The Court has supplemental jurisdiction over
13 Plaintiff’s other claims pursuant to 28 U.S.C. §1367(a). The Court has *in rem* jurisdiction over the
14 Plaintiff’s claims pursuant to, inter alia, 28 U.S.C. §1655.

15 7. Venue in this District is based on 28 U.S.C. §1391(b) because a substantial part of the
16 events or omission giving rise to the claim occurred in this District.

17 FACTUAL ALLEGATIONS

18 8. In 2012, Plaintiff grew Produce, including but not limited to green leaf lettuce, romaine
19 and lettuce in the Salinas Valley located in Monterey County. Said Produce was marketed by
20 Chieftain Harvesting, Inc., on Plaintiff’s behalf and sold to Sunterra. Attached hereto as Exhibit A
21 and incorporated herein by reference is a spreadsheet showing the shipping date, the order number,
22 the invoice amount for all produce that was grown by Plaintiff and sold to Sunterra between April, 1,
23 2012 and August 25, 2012. The amount sold to Sunterra of Produce grown by Plaintiff was
24 \$179,149.32.

25 9. The Defendants accepted each load of Produce which corresponds to the invoice order
26 number as listed in Exhibit A.

27 10. The Defendants accepted each load of Produce reference in Exhibit A within the State of
28 California.

1 11. Plaintiff issued to Chieftain Harvesting an invoice for each load of Produce that was sold
2 to Sunterra. Each invoice contained the following language: “The perishable agricultural
3 commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of
4 the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these
5 commodities retains a trust claim over these commodities, all inventories of food or other products
6 derived from these commodities, any receivables or proceeds from the sale of these commodities
7 until full payment is received.”

8 12. Chieftain Harvesting issued to the Defendants an invoice for each load of Produce grown
9 by Plaintiff and sold to Sunterra as referenced in Exhibit A. Each of said invoices issued to Sunterra
10 contained the following language: “The perishable agricultural commodities listed on this invoice
11 are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural
12 Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim
13 over these commodities, all inventories of food or other products derived from these commodities,
14 any receivables or proceeds from the sale of these commodities until full payment is received.”
15 Attached hereto as Exhibit B and incorporated herein by reference are a true and correct copy of
16 each invoice received by Sunterra for Produce grown by Plaintiff and sold to Sunterra as referenced
17 in Exhibit A.

18 13. Sunterra failed to pay Chieftain Harvesting for the Produce grown by Plaintiff and sold to
19 Sunterra as referenced in Exhibit A and as shown in the invoices contained in Exhibit B. Chieftain
20 Harvesting failed to pay for the Produce grown by Plaintiff and sold to Sunterra. Plaintiff, among
21 others, have filed an action alleging PACA violations against Chieftain Harvesting and others for the
22 collection of these amounts as well as other amounts in *Whole Leaf USA, LLC et al. v. United*
23 *Security Bank, et al*, United States District Court, Northern District of California, Case No. C 13-
24 03833 PSG, (hereinafter “Whole Leaf USA, LLC Litigation”).

25 14. Plaintiff is an unsold supplier or seller of Produce having grown Produce sold to
26 Sunterra for which it remains unpaid.

27 15. Despite repeated demands, the Defendants failed to pay or otherwise deliver good funds
28 to Plaintiff in the amount set forth in Exhibit A.

1 16. At all times relevant herein, Sunterra acted by and through its principal, Brazeel.

2 COUNT I

3 ENFORCEMENT OF PACA TRUST

4 17. Plaintiff re-alleges Paragraphs 1 through 16 as though fully set forth herein.

5 18. The Defendants are in possession, custody and control of all assets derived from the
6 Defendants' sale of: (1) Produce; (ii) food or products derived from Produce; (iii) accounts
7 receivables; (iv) proceeds from the sale of Produce; (v) cash; (vi) any other assets commingled with
8 proceeds of Produce; and (vii) any other assets acquired or maintained with such proceeds, cash,
9 assets, or other trust assets held in Sunterra's name (the "PACA Trust Assets") for the benefit of
10 Plaintiff and all other similarly-situated PACA trust beneficiaries.

11 19. The Defendants failed to deliver to Plaintiff sufficient funds from the PACA Trust
12 Assets to fully satisfy all qualified PACA trust claims, such as the Plaintiff's unpaid claims asserted
13 in this action.

14 20. Upon information and belief, Plaintiff alleges that the Defendants failed to preserve
15 sufficient amounts of the PACA Trust Assets to fully satisfy all qualified PACA trust claims, such as
16 the Plaintiff's unpaid claims asserted in this action.

17 21. The matters and actions alleged in this Count One constitute a violation by Defendants
18 of Section 2 of the PACA.

19 22. As a direct result of the Defendants' failure to properly protect the PACA Trust Assets
20 from dissipation, Plaintiff has suffered damages which are covered under the PACA trust in the
21 current aggregate amount of \$179,149.32, plus interest and attorneys' fees incurred in this action.

22 23. On information and belief and as alleged in the Whole Leaf USA, LLC Litigation,
23 additional unpaid trust beneficiaries, some of which may be unknown, exist. As a result, Plaintiff
24 further seeks the entry of an Order directing the Defendants to immediately turn over to the Registry
25 of the Court all assets impressed with the PACA trust for the benefit of all unpaid trust beneficiaries
26 such as the Plaintiff herein, thereby creating a fund for the benefit of such beneficiaries.

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COUNT II

PACA VIOLATION: FAILURE TO PAY PROMPTLY

24. Plaintiff realleges paragraphs 1 through 23 as though fully set forth herein.

25. The Defendants received each of the shipments of Produce referenced in Exhibit A and invoiced as shown in Exhibit B.

26. The Defendants agreed to pay for said Produce within 10 days of receipt. The Defendants failed to pay the invoices attached hereto as Exhibit B within the applicable payment terms.

27. The matters and actions alleged in the Count II constitute a violation by Defendants of Section 2 of the PACA.

28. As a direct result of the Defendants' failure to pay for each invoice within terms, Plaintiff has incurred damages in the current aggregate amount of \$179,149.32, plus interest and collection costs including but not limited to attorneys' fees incurred in this action.

COUNT III

BREACH OF FIDUCIARY DUTY

29. Plaintiff realleges paragraphs 1 through 28 as though fully set forth herein.

30. At all times relevant to this action, Brazeel was an officer, director or shareholder of Sunterra, and the person in charge of its business undertakings.

31. At all times relevant to this action, Brazeel engaged, directly or indirectly, in the business of buying or selling Produce in interstate or foreign commerce in wholesale of jobbing quantities.

32. At all times relevant to the action, Brazeel controlled and managed Sunterra's operations and had control over Sunterra's financial dealings, including those involving the PACA Trust Assets.

33. At all times relevant to the action, Brazeel was in a position to control and manage Sunterra's operations and had the ability to control Sunterra's financial dealings, including those involving the PACA Trust Assets.

1 34. As an officer, director and/or shareholder of Sunterra, Brazeel was a statutory trustee
2 with a duty to safeguard the PACA Trust Assets and was required to maintain the trust assets in such
3 a manner as to ensure there was, at all times, sufficient trust assets to satisfy all outstanding PACA
4 trust obligations such as those owed to Plaintiff herein.

5 35. Because Brazeel controlled and/or was in a position to control Sunterra and Plaintiff has
6 not been paid from PACA Trust Assets, Brazeel has breached his fiduciary duty under the PACA
7 trust.

8 36. Brazeel continues to hold any and all PACA Trust Assets having come into his
9 individual possession as trustees for the Plaintiff's beneficial interest in the PACA trust.

10 37. Brazeel is personally liable to Plaintiff, which liability is joint and several with Sunterra
11 and any third parties having received any PACA Trust Assets with actual or constructive notice of
12 the breach of the PACA trust, for the dissipation of the PACA trust in the current aggregate amount
13 of \$179,149.32, plus interest and collection costs including but not limited to attorney's fees,
14 incurred in this action, to be satisfied from Brazeel's personal assets.

15 WHEREFORE, Plaintiff respectfully seeks the entry of judgment as follows:

16 A) As to Count I: (i) entering a judgment creating a common fund and/or otherwise
17 compelling the preservation of the Defendants' PACA Trust Assets for the benefit of Plaintiff and
18 other similarly-situated PACA trust beneficiaries that properly join in the instant action; (ii) entering
19 a judgment directing the Defendants to immediately turn over to the registry of the Court all assets
20 impressed with the PACA trust for the benefit of all unpaid trust beneficiaries such as the Plaintiff,
21 and (iii) entering a final judgment in favor of Plaintiff and against the Defendants, jointly and
22 severally, in the amount of \$179,149.32 plus interest and collection costs, including attorneys' fees,
23 incurred in this action, less any actual recovery on other Counts herein.

24 B) As to Count II: entering a judgment in favor of Plaintiff and against Defendants, jointly
25 and severally, in the amount of \$179,149.32, plus interest and costs of collection, including
26 attorneys' fees, incurred in this action, less any actual recovery on other Counts herein.

27 C) As to Count III: entering a judgment in favor of Plaintiff and against Defendant Brazeel,
28 on a joint and several basis with Sunterra, for a breach of his fiduciary duty to the PACA trust, in the

1 amount of \$179,149.32, plus interest and costs of collection, including attorneys' fees incurred in
2 this action, less any actual recovery on other Counts herein.

3 D) For such other and further relief that the Court may deem just and proper.

4 Dated: January 21, 2014

OTTONE LEACH OLSEN & RAY LLP

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6 By /S/
7 Anne Frassetto Olsen, Esq.
8 Attorneys for MKM Farms, Inc.
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